

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

No. 5:10-CR-00115-F-1

No. 5:11-CV-00745-F

TIERRE JAVON OUTLAW,)	
Petitioner,)	
)	
v.)	<u>ORDER</u>
)	
UNITED STATES OF AMERICA,)	
Respondent.)	

This matter is before the court on the Government's Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure [DE-53].

In support of its Motion to Dismiss, the Government has submitted the Declaration of James R. Hawes. [DE-53-1, Exhibit A.] As a general rule, evidence should not be considered at the 12(b)(6) stage. *Am. Chiropractic Ass'n v. Trigon Healthcare, Inc.*, 367 F.3d 212, 234 (4th Cir. 2004). A court can convert a Rule 12(b)(6) motion into a motion for summary judgment so as to consider matters outside the pleadings. *Bosiger v. U.S. Airways*, 510 F.3d 442, 450 (4th Cir. 2007). However, if the court elects to make the conversion, it must assure that the parties are on notice of the changed status of the motion. *Davis v. Zahradnick*, 600 F.2d 458, 460 (4th Cir. 1979).

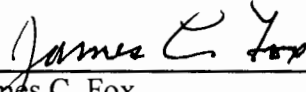
In this case, the Government's Motion to Dismiss references and relies upon Hawes' Declaration. [DE-53 at 3.] The court concludes that conversion is warranted and Petitioner is entitled to notice.

In light of the foregoing, the court advises Petitioner that it intends to construe the Government's Motion to Dismiss as one seeking summary judgment and will consider Hawes'

Declaration. *See Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975). Petitioner is further advised that he should respond to the Government's motion with affidavits, declarations, citations to particular parts of the record, or other material in such a manner so as to persuade this court that a genuine issue of material fact remains to be determined. Petitioner shall file his response to the Government's motion within twenty-one days. The Government may file a reply, if any, within seven days thereafter.

SO ORDERED.

This the 30th day of July, 2014.



James C. Fox
Senior United States District Judge